

Internal Revenue Service

Number: **201037014**
Release Date: 9/17/2010
Index Number: 851.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B02
PLR-110290-10

Date:
June 04, 2010

Legend:

Fund A =

Fund B =

Trust =

Type A Company =

State =

Country =

Date 1 =

Date 2 =

Dear :

This responds to your letter dated March 3, 2010, submitted by your authorized representative on behalf of Fund A and Fund B (each a “Fund” and, together, the “Funds”). Funds request that the Internal Revenue Service rule that income derived from each Fund’s investments in a wholly-owned subsidiary that is a controlled foreign corporation (CFC) constitutes qualifying income under § 851(b)(2) of the Internal Revenue Code of 1986, as amended (the Code).

Facts:

Each Fund is a series of Trust, which is a business trust organized under the laws of State. Trust is registered as an investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the 1940 Act). Each Fund is an accrual method taxpayer, classified as a corporation for federal income tax purposes. Fund A uses a fiscal year ending Date 1, and Fund B uses a fiscal year ending Date 2, as their taxable years. Each Fund is a regulated investment company (RIC) under § 851(a) of the Code.

Fund A intends to form a wholly-owned subsidiary (Subsidiary A) incorporated as a Type A Company under the laws of Country. Fund B also intends to form a wholly-owned subsidiary (Subsidiary B) incorporated as a Type A Company under the laws of Country. Under the laws of Country, a Type A Company provides limited liability for all holders of shares. A shareholder's liability is limited to the amount, if any, unpaid with respect to the shares acquired by the shareholder. Subsidiary A and Subsidiary B intend to file elections on Form 8832, Entity Classification Election, to ensure that they will be treated as corporations for federal income tax purposes.

Each Fund represents that, although neither Subsidiary A nor Subsidiary B will be registered as an investment company under the 1940 Act, each Subsidiary will comply with the requirements of section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and related SEC guidance pertaining to asset coverage with respect to transactions in commodity swaps, commodity futures and other transactions in derivatives.

Each Fund will invest a portion of its assets in its Subsidiary, subject to the limitations set forth in § 851(b)(3) of the Code. Each Subsidiary is expected to invest primarily in commodities, commodity-linked swaps, commodity-linked futures, and other commodity-linked derivatives, including total return swaps and commodity-linked securities. They may also invest in fixed income or equity investments and other securities and derivatives.

Subsidiary A will be wholly-owned by Fund A, and Subsidiary B will be wholly-owned by Fund B, and both are thus expected to be classified as CFCs, as defined in § 957 of the Code. Each Fund will include its "subpart F" income attributable to its Subsidiary under the rules in the Code applicable to CFCs.

Law and Analysis:

Section 851(b)(2) of the Code provides that a corporation shall not be considered a RIC for any taxable year unless it meets an income test. Under this test, at least 90

percent of its gross income must be derived from certain enumerated sources. Section 851(b)(2) defines qualifying income, in relevant part, as –

dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the 1940 Act) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to [the RIC's] business of investing in such stock, securities, or currencies

Section 2(a)(36) of the 1940 Act defines the term “security” as –

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

In addition, the flush language of § 851(b) of the Code provides that, for purposes of § 851(b)(2), there shall be treated as dividends amounts included in gross income under §§ 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under §§ 959(a)(1) or 1293(c) (as the case may be), there are distributions out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 of the Code defines a controlled foreign corporation (CFC) as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock is owned by United States shareholders on any day during the corporation's taxable year. A United States shareholder is defined in § 951(b) as a United States person who owns 10 percent or more of the total voting power of a foreign corporation. Each Fund represents that it will own 100 percent of the voting power of the stock of its Subsidiary. Each Fund is a United States person. Each Fund therefore represents that its Subsidiary will qualify as a CFC under these provisions.

Section 951(a)(1) of the Code provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of this corporation and who owns stock in this corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952 of the Code defines subpart F income to include foreign base company income determined under § 954. Under § 954(a)(1), foreign base company income includes foreign personal holding company income determined under § 954(c). Section 954(c)(1) defines foreign personal holding company income to include dividends, interest, royalties, rents, and annuities; gains in excess of losses from transactions in commodities (including futures, forward, and similar transactions but excluding certain hedging transactions and certain active business gains and losses); and, subject to certain exceptions, net income from notional principal contracts.

Each Subsidiary's income from its investments in commodities and commodity-linked instruments may generate subpart F income. Each Fund therefore represents that it will include in income its Subsidiary's subpart F income for the taxable year in accordance with § 951.

Conclusion:

Based on the facts as represented, we rule that subpart F income of Subsidiary A attributable to Fund A is income derived with respect to Fund A's business of investing in the stock of Subsidiary A and thus constitutes qualifying income under § 851(b)(2) of the Code. We also rule that subpart F income of Subsidiary B attributable to Fund B is income derived with respect to Fund B's business of investing in the stock of Subsidiary B and thus constitutes qualifying income under § 851(b)(2) of the Code.

This ruling is directed only to the taxpayer who requested it, and is limited to the facts as represented by the taxpayer. Section 6110(k)(3) provides that this letter may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Thomas M. Preston
Thomas M. Preston
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)